



DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 19-00001]

Export Trade Certificate of Review

ACTION: Notice of Application for an Export Trade Certificate of Review for National Pecan Shellers Association, Application no. 19-00001.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (“OTEA”) of the International Trade Administration, has received an application for an Export Trade Certificate of Review (Certificate). This notice summarizes the proposed application and seeks public comments on whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or email at etca@trade.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) (“the Act”) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR Part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of Commerce to publish a summary of the application in the Federal Register, identifying the applicant and each member and summarizing proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business

information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as “Export Trade Certificate of Review, application number 19-00001.”

A summary of the application follows.

Summary of the Application

Applicant: National Pecan Shellers Association, 3200 Windy Hill Rd., SE, Suite 600W, Atlanta, GA, 30339

Contact: Russell A. Lemieux, Senior Vice President of Kellen, Telephone: (678) 303-3041

Application No.: 19-00001

Date Deemed Submitted: June 3, 2019

Summary: National Pecan Shellers Association (“NPSA”) seeks a Certificate to engage in the export conduct described below.

Applicant / Certificate Holder

- NPSA

Proposed Members (“Members”)

- Arncos, Inc. dba Carter Pecan, Panama City Beach, Florida
- Chase Farms, LLC, Artesia, New Mexico
- Diamond Food, LLC, Stockton, California

- Green Valley Company, Sauharita, Arizona
- Hudson Pecan Co., Inc., Ocilla, Georgia
- Lamar Pecan Company, Hawkinsville, Georgia
- Navarro Pecan Company, Corsicana, Texas
- Pecan Grove Farms, Dallas, Texas
- San Saba Pecan, LP, San Saba, Texas
- South Georgia Pecan Company, Valdosta, Georgia

If the Certificate is issued, NPSA will establish a specially-funded Pecan Export Trade Council (“PETC”), which will operate under the umbrella of NPSA and in a committee-like fashion, although not an official committee of NPSA. PETC will be managed and administered by an independent third party, who will not disclose information obtained from PETC to another Member, non-Member, and/or NPSA. PETC will provide export trade facilitation services, including to the Members. PETC’s charter members will be the Members above. PETC membership will be open to companies that are member and non-member companies of NPSA, and shall be limited to: (1) Exporting U.S. Shellers (i.e., companies with a commercial pecan shelling plant); (2) Exporting U.S. pecan growers, and; (3) Exporting U.S. handlers of pecans. NPSA and PETC, once it is established, do not, and do not intend to, export Products.

Export Trade

Products: Pecan kernels and in-shell pecans, including raw and processed

Services: All services related to the export of Products.

Technology Rights: All intellectual property rights associated with Products or Services, including, but not limited to: patents, trademarks, services marks, trade names, copyrights, neighboring (related) rights, trade secrets, know-how, and confidential databases and computer programs.

Export Trade Facilitation Services (as They Relate to the Export of Products): Export Trade Facilitation Services, including but not limited to: Consulting and trade strategy, arranging and coordinating delivery of Products to the port of export; arranging for inland and/or ocean transportation; allocating Products to vessel; arranging for storage space at port; arranging for warehousing, stevedoring, wharfage, handling, inspection, fumigation, and freight forwarding;

insurance and financing; documentation and services related to compliance with customs' requirements; sales and marketing; export brokerage; foreign marketing and analysis; foreign market development; overseas advertising and promotion; Products-related research and design based upon foreign buyer and consumer preferences; inspection and quality control; shipping and export management; export licensing; provisions of overseas sales and distribution facilities and overseas sales staff; legal; accounting and tax assistance; development and application of management information systems; trade show exhibitions; professional services in the area of government relations and assistance with federal and state export assistance programs (e.g., Export Enhancement and Market Promotion programs, invoicing (billing) foreign buyers; collecting (letters of credit and other financial instruments) payment for Products; and arranging for payment of applicable commissions and fees.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operations

1. To engage in Export Trade in the Export Markets, NPSA, acting through PETC, or through export intermediaries (to the extent provided in section g, below), may:
 - a. Establish sales price, minimum sales price, target sales price and/or minimum target sales price, and other terms of sale;
 - b. Help Members collaborate in the marketing and distribution of Products;
 - c. Conduct joint promotion of Products;
 - d. Agree on quantities of Products to be sold, provided each member shall be required to dedicate only such quantity or quantities as each such Members shall independently determine;
 - e. Allocate geographic areas or countries in the Export Markets and/or customers in the Export Markets among Members;

- f. Provide a forum whereby Members may agree to refuse to quote prices for Products, or to market or sell Products, to or for any customers in the Export Market, or any countries or geographical areas in the Export Markets;
 - g. Enter into exclusive and non-exclusive agreements appointing one or more export intermediaries 1) for the sale of Products with price, quantity, territorial and/or customer restrictions as provided in sections 1.a through 1.f, inclusive, above;
 - h. Purchase Products from companies that are not Members to fulfill specific sales obligations, provided that PETC and/or its Members shall make such purchases only on a transaction-by-transaction basis and when the Members are unable to supply, in a timely manner, the requisite, Products at a price competitive under the circumstances. In no event shall a company that is not a Member be included in any deliberations concerning any Export Trade Activities;
 - i. Negotiate favorable transportation rates (e.g., volume discounts) and consolidate shipments;
2. PETC and its Members may exchange and discuss the following information:
- a. Information about sales and marketing efforts for the Export Markets, activities and opportunities for sales of Products in the Export Markets, selling strategies for the Export Markets, sales for the Export Markets, contract and spot pricing in the Export Markets, projected demands in the Export Markets for Products, customary terms of sales in the Export Markets, prices and availability of Products from competitors for sale in the Export Markets, and specifications for Products by customers in the Export Markets;
 - b. Information about the price, quality, quantity, source and delivery dates of Products available from the Members to export;
 - c. Information about terms and conditions of contracts for sale in the Export Markets to be considered and/or bid on by Members;
 - d. Information about joint bidding or selling arrangements for the Export Markets and allocations of sales resulting from such arrangements among the Members;
 - e. Information about expenses specific to exporting to and within the Export Markets, including without limitation, transportation, trans- or intermodal shipments, insurance,

- inland freights to port, port storage, commissions, export sales, documentation, financing, customers, duties and taxes;
- f. Information about U.S. and foreign legislation and regulations, including federal marketing order programs, affecting sales for Export Markets;
 - g. Information about PETC's or Members' export operations, including without limitation, sales and distribution networks, established by PETC or the Members in the Export Markets, and prior export sales by Members (including export price information); and
 - h. Information about export customer credit terms and credit history.
3. Neither NPSA nor PETC will engage in export sales of pecans on behalf of any sheller, grower, or handler.

Dated: June 11, 2019.

Joseph Flynn,

Director,

Office of Trade and Economic Analysis,

International Trade Administration,

U.S. Department of Commerce.

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